

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9292 OF 2015

1. Dr. Vijaykumar s/o Limbajirao Suryawanshi,
Age 58 yrs. Occ. Service
At present r/o c/o. R.R.Kulkarni,
Municipal Colony, Dargha Road,
Parbhani Tq and Dist. Parbhani.
2. Atmaram s/o Shamrao Gangane,
Age 45 yrs. Occ. Service,
r/o. 37/A Yogeshwari Nagar, Behind New Power,
House, Jintur Road, Parbhani,
Tq. and Dist. Parbhani.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education Department,
Mantralaya, Mumbai 32
2. The Director, Higher Education
Maharashtra State, Pune.
3. The Joint Director,
Higher Education, Nanded Region,
Nanded.
4. The Principal,
Dnyanopasak Shikshan Mandal's
College of Arts, Commerce and Science,
Parbhani Tq. and Dist. Parbhani.

...RESPONDENTS

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Mr.N.D.Kendre, Adv., for petitioners.
Shri A.V.Deshmukh, AGP for respondent nos.1 to 3.
Respondent no.4 served.

**CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.**

Date of reserving the judgment: 23/2/2016

Date of pronouncing judgment: 26/2/2016

JUDGMENT: (Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the petitioners and learned A.G.P. for respondent nos. 1 to 3. Respondent no.4, though served, remained absent.

2. The petitioners are praying for issuance of Writ of Mandamus or order or direction in the nature of Writ of Mandamus, directing the respondents to step up the salary of the petitioners equivalent to the salary of Associate Professors, who are junior to them, with effect from the date of promotion of the said junior Associate Professors, as per the Government Resolution dated 12th August, 2009. The petitioners have also prayed for issuance of direction to the respondents to pay the amount admissible in accordance with the decision, together with interest at the rate of 18 per cent per annum

from the date on which the amount becomes due and payable till its actual disbursement.

3. Petitioners are serving as Associate Professors in respondent no. 4 College. Their appointments have been duly approved by respondent No.3.. Both the petitioners hold Ph.D. degree. Petitioner no.1 came to be appointed as Lecturer on 1st of August, 1981, whereas, petitioner no.2 was appointed w.e.f. 23rd July, 1990. The grievance of the petitioners is that, on implementation of Sixth Pay Commission, juniors of the petitioners, who have acquired Ph.D. degree subsequent to 1.1.2006, were allowed five additional increments whereas the petitioner no.1, who has secured the Ph.D. degree in May, 1989, and petitioner no.2, who has secured the degree of Ph.D. in the year 2004, are deprived of the said benefit.

4. The petitioners have pointed out the cases of Dr.A.H.Shrirame, Dr.M.V.Sangle and Dr.D.T.Ibbatwar, who are junior to them. As stated earlier, petitioner no.1 Dr.V.L.Suryawanshi came to be appointed w.e.f. 1.8.1991 whereas Dr.A.H.Shrirame was appointed w.e.f. 30th of August, 1984, and Dr.M.V.Sangle came to be appointed w.e.f.

15.6.1987. Dr. A.H.Shrirame and Dr.M.V.Sangle both have acquired the degree of Ph.D. much after petitioner no.1 Dr.V.L.Suryawanshi. Petitioner no.1 acquired the degree of Ph.D. in the year 1989 whereas Dr.A.H.Shrirame acquired the same in May, 2007, and Dr.M.V.Sangle obtained the same in December, 2009. Similarly, Dr.D.T.Ibbatwar is junior to petitioner No.2 Dr.Gangane. Petitioner No.2 was appointed on 23.7.1990 and he acquired the degree of Ph.D. on 3.7.2004, whereas, Dr.Ibbatwar's date of appointment is 18.7.1991 and he received the Ph.D. degree on 2.6.2008.

5. It is the further contention of the petitioners that Dr.A.H.Shrirame and Dr.M.V.Sangle, who were drawing the salary in the lower pay scale than petitioner no.1 till April, 2007, started receiving the salary in the higher pay scale than petitioner no.1. As per the information provided in the petition, till April, 2007, Dr.A.H.Shrirame and Dr.M.V.Sangle were drawing their wages in the pay scale of Rs.38,530/- whereas, petitioner no.1 was drawing the salary in the pay scale of Rs.40,890/-, however, with effect from 1.5.2007, when Dr.A.H.Shrirame and Dr.M.V.Sangle started receiving the salary in the pay scale of Rs.44,370/- plus Annual Grade Pay of Rs.9,000/-, and Rs.49,340/- plus Rs.9,000/- towards Annual

Grade Pay, respectively, the petitioner no.1 was drawing the salary in the pay scale of Rs.42,390/- plus Rs.9,000/- Annual Grade Pay. Likewise, Dr.Ibbatwar, who was drawing the salary in the lower pay scale than petitioner no.2, started receiving the salary in the higher pay scale than petitioner no.2 with effect from 2.6.2008.

6. In the aforesaid factual background, the petitioners have prayed for stepping up their salaries at par with the persons junior to them.

7. Learned Counsel appearing for the petitioners submitted that the issue raised in the present petition is no more res integra in view of the judgment delivered by the Division Bench of this court in the case of **Sudamrao Keshavrao Aher & Ors. Vs. The State of Maharashtra and Ors. - 2014(1) ALL MR 697**. Learned Counsel, therefore, prayed for allowing the petition by directing the respondents to step up the salaries of the petitioners at par with the persons junior to them.

8) Learned AGP has opposed the submissions made on behalf of the petitioners and has prayed for dismissal of the

petition.

9) After having considered the facts involved in the present petition, in the light of the judgment delivered by the Division Bench of this Court in the matter of Sudamrao Keshawrao Aher & Ors. (cited supra), we have no doubt that, the case of the present petitioners is squarely covered by the aforementioned judgment of the Division Bench.

10) The Petitioners have relied upon the Government Resolution dated 12.08.2009, note 6 of which provides that, in case where the senior teacher promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay of such senior teacher should be stepped up to an amount equal to the pay in pay band as fixed for his junior in that higher post.

11. In the present petition also, it is revealed that the incentives were given to the petitioners as also to their juniors, but in the process, the juniors are getting a substantial sum more every month than the petitioners. This anomaly has occurred for the reason that, the teachers junior to the

petitioners who have been awarded Ph.D. Degree after 01st January, 2006 are made entitled to three non compoundable increments, whereas the petitioners who acquired Ph.D. degrees before 1st January 2006, were extended only two increments.

12) The aforesaid controversy has been dealt with by the Division Bench of this Court in the matter of Sudamrao Keshawrao Aher & Ors. (cited supra). In para 15 of the said judgment, the Division Bench has observed thus:

"15. In present matter, according to us, the incentives while implementing 6th Pay Commission for Ph.D. cannot be so given so as to give a junior teacher more pay than the senior who is otherwise equally qualified. Rather he has more experience and is senior even in the acquisition of the Ph.D. Degree. All things given to be the same at a given point of time, junior teacher could not be getting more salary than the senior only because the junior has just acquired the Ph.D. Degree. The Constitution has goal under Article 39(d) that there should be equal pay for equal work. If the arguments as raised on behalf of the Respondents are accepted, the same would amount to discriminating to teachers only on the basis of junior teacher having acquired Ph.D. Degree recently under new Pay Commission. This would be violative of the principles as enunciated in Article 16 of the Constitution and such position cannot be allowed to be maintained. It is different when one person is having higher qualifications. However, it would be discriminatory when both are having similar qualifications and a person not only senior in service but also equally qualified is so discriminated so as to be put in disadvantageous position as if it was a fault to have acquired Ph.D. Degree earlier."

13. In the instant matter, petitioner no.1 is, admittedly, senior to Dr. A. H. Shrirame and Dr. M.V.Sangle whereas, petitioner no.2 Dr.A.S.Gangane is admittedly senior to Dr.D.T.Ibbatwar. There is further no dispute that till April, 2007, petitioner no.1 was drawing the salary in the higher pay scale than Dr. A.H.Shrirame and Dr.M.V.Sangle whereas, petitioner no.2 Dr. A.S.Gangane was drawing the salary in the higher pay scale than Dr. D.T.Ibbatwar. However, after Dr. A.H.Shrirame and Dr.M.V.Sangle acquired the degree of Ph.D., respectively, in the years 2007 and 2009, both were provided with the additional increments and were respectively placed in the pay scale of Rs.44,370/- plus Rs.9,000/- annual grade pay, and Rs.49,340/- plus Rs.9,000/- annual grade pay. Similarly, Dr. D.T.Ibbatwar, who is admittedly junior to petitioner no.2, Dr.Gangane, started receiving the salary in the higher pay scale than petitioner no.2 w.e.f. 2.6.2008. As held by the Division Bench of this Court, in the case of **Sudamrao Keshavrao Aher & Ors.** (cited supra), such position cannot be allowed to be maintained.

14. In view of the reasons set out in the judgment of **Sudamrao Keshavrao Aher & Ors.** (cited supra), the instant

petition also deserves to be allowed and the same is accordingly allowed. We direct the respondents to step up the salary of the petitioners at par with the similarly placed teachers junior to them and compute the salary and arrears payable to the petitioners in accordance with the judgment and order passed by the Division Bench of this Court in the aforesaid case of **Sudamrao Keshavrao Aher & Ors.** (cited supra) and release the amount to the petitioners as expeditiously as possible, and preferably, within six months from the date of this order.

Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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